

## Message Text

CONFIDENTIAL

PAGE 01 USUN N 03685 131515Z

53

ACTION IO-13

INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10 DLOS-06

ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 COME-00 DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05

FEAE-00 FMC-01 TRSE-00 H-02 INR-07 INT-05 JUSE-00

L-03 NSAE-00 NSC-05 NSF-01 OES-06 OMB-01 PA-01 PM-04

PRS-01 SP-02 SS-15 USIA-06 SAL-01 IOE-00 /157 W

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FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9112

C O N F I D E N T I A L USUN 3685

FROM US DEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT

SEPTEMBER 10, 1976

1. INFORMAL PLENARY SEPTEMBER 10 TOOK UP, BUT DID NOT COMPLETE, ANNEX II (SPECIAL PROCEDURES). SINCE THE FOUR SUB-ANNEXES ARE LARGELY IDENTICAL, AMERASINGHE SUGGESTED THEY BE TREATED TOGETHER.

2. MOROCCO, PERU, ECUADOR, CHILE AND TUNISIA SOUGHT DELETION OF ENTIRE ANNEX II. AMONG THE LARGE NUMBER OF REASONS GIVEN WERE 1) SPECIAL PROCEDURES UNDERMINE THE PRESTIGE OF THE GENERAL PROCEDURES, 2) THEY GENERATE CONFUSION, 3) EXPERTS, EVEN INCLUDING SOME LEGAL EXPERTS, SHOULD NOT MAKE LEGALLY BINDING INTERPRETATION OR APPLICATION DECISIONS, 4) SINCE SPECIAL PROCEDURES ARE IN FACT TECHNICAL ARBITRATION ANNEX 1B MAKES THEM UNNECESSARY, 5) EXPERTS ARE FROM DEVELOPED COUNTRIES AND COMPOSITION OF COMMITTEES IS NOT LIKELY TO GIVE

CONFIDENTIAL

PAGE 02 USUN N 03685 131515Z

COUNTRIES AND COMPOSITION OF COMMITTEES IS NOT LIKELY TO GIVE

DUE REGARD TO EQUITABLE GEOGRAPHIC REPRESENTATION AND 6) DECISIONS BY SPECIAL COMMITTEES MIGHT CREATE JURISPRUDENCE DIFFERING FROM THAT UNDER GENERAL PROCEDURES.

3. USSR STRONGLY SUPPORTED RETENTION OF ANNEX II. SOVIET REP POINTED OUT THIS WAS THE FIRST TIME IN 60 YEARS THE USSR IS DISCUSSING COMPULSORY DISPUTE SETTLEMENT, THAT IT HAS REFUSED TO BECOME A PARTY TO MANY AGREEMENTS THAT CONTAIN CDS, OR MADE RESERVATIONS ON THE SUBJECT, AND THAT IT WOULD BE IMPOSSIBLE FOR USSR TO SUPPORT ANY CDS IF ANNEX II IS DELETED. POLAND, ON BEHALF OF EASTERN EUROPEAN GROUP, PRESENTED EXTENSIVE AMENDMENTS TO ANNEX II A (FISHERIES), WHICH WOULD APPLY MUTATIS MUTANDIS TO THE OTHER PARTS OF ANNEX II. THESE AMENDMENTS ALLOW SPECIAL COMMITTEES TO BOTH INTERPRET AND APPLY THE CONVENTION, ALLOW INCLUSION OF JURISTS AND DO AWAY WITH ARTICLE 7.REFERENCE PROCEDURE.

4. JAPAN, FRANCE AND ITALY DEFENDED ANNEX WITH AMENDMENTS GENERALLY ALONG THE LINES OF POLAND'S. JAPAN AND FRANCE WISHED TO SHORTEN TIME LIMITS IN ARTICLE 2 (APPOINTMENT) AND ARTICLE 6 (DECISION) TO HAVE THE SECRETARY GENERAL OF THE UNITED NATIONS, RATHER THAN DIRECTORS GENERAL OF SPECIALIZED AGENCIES, APPOINT UMPIRE IN CASE OF DISAGREEMENT BETWEEN THE PARTIES. JAPAN ALSO SUGGESTED WE CONSIDER AN ADMINISTRATIVE BODY TO EXPEDITE THE PROCEDURE, AND FRANCE SUGGESTED USING THE BUREAU ESTABLISHED UNDER THE 1907 HAGUE CONVENTION AS A MODEL.

5. ICELAND LINKED HER SUPPORT TO ANNEX A TO THE SATISFACTION OF ITS QTE VITAL INTEREST UNQTE IN MAKING IT CLEAR IN ARTICLE 18 OF THE MAIN TEXT THAT ARTICLES 50 AND 51 OF PART II WILL NOT BE SUBJECT TO ADJUDICATION. MEXICO, ON BEHALF OF THE GROUP OF COASTAL STATES, SIMILARLY LINKED ACCEPTANCE OF ANNEX II A TO SATISFACTION OF GROUP'S POSITION ON ARTICLE 18, I.E. DELETION OF THE "DUE REGARD" CLAUSE IN PARA. 1(A) OF THAT ARTICLE.

6. TUNISIA SUPPORTED STATEMENTS REPORTED PARA. 2 THIS TEL AND SAID DEVELOPING COUNTRIES DID NOT RPT NOT WISH TO BE CONFIDENTIAL

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PAGE 03 USUN N 03685 131515Z

FORCED INTO SPECIAL PROCEDURES DIRECTLY OR INDIRECTLY. AS A COMPROMISE, TUNISIA SUGGESTED MAKING SPECIAL PROCEDURES OPTIONAL BY DELETING THE WORDS QTE FOR THE SETTLEMENT OF DISPUTES TO WHICH SUCH SPECIAL PROCEDURES ARE NOT APPLICABLE UNQTE IN ARTICLE 9, PARA. 2 OF THE MAIN TEXT AND ADDING THE WORDS QTE WITH THE EXCEPTION OF THE SPECIAL PROCEDURES WHICH SHALL REQUIRE THE AGREEMENT OF THE PARTIES UNQTE TO ARTICLE 9, PARA. 7 OF THE MAIN

TEXT.

7. AMERASINGHE INDICATED HE HAD ABOUT 15 SPEAKERS LEFT  
ON THE LIST, RAISING POSSIBILITY OF A DELAY OF PLENARY  
DISCUSSION OF FINAL CLAUSES NEXT WEEK.  
SHERER

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